

5701
DECISION



M. H. ...
P. ...
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191347

DATE: March 15, 1978

MATTER OF: ENSEC Service Corp.

DIGEST:

Protest against alleged deficiencies in solicitation filed initially with contracting agency is untimely since it was not filed within 10 working days after initial adverse agency action, opening bids without correcting alleged deficiencies (notwithstanding telegram from agency advised bid opening will be as scheduled and statement of explanation will follow).

ENSEC Service Corp. (ENSEC) has protested against the making of any award under General Services Administration's (GSA) invitation for bids (IFB) No. 03C8080401, issued on November 18, 1977, for security guard services at six buildings within the District of Columbia. Bid opening was scheduled for December 15, 1977.

By letter dated December 8, 1977, ENSEC contended to GSA that the solicitation contained several deficiencies and requested that the contracting officer delay bid opening until ENSEC's protest could be reviewed and the defects corrected. ENSEC argued that there were three apparent deficient areas in the IFB: (1) no established period of performance, (2) an ambiguity concerning procedural application of contract deductions, and (3) vagueness of liquidated damages or penalty clause. GSA responded by telegram dated December 14, 1977, advising ENSEC that GSA reviewed the discrepancies and determined not to change the scheduled bid opening. In addition the telegram stated that "a letter of explanation will follow." By letter dated February 16, 1978, GSA advised ENSEC why it felt the solicitation was proper as issued.

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Our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1977), provide that where a protest has been initially filed with an agency on a timely basis, as here, any subsequent protest to our Office will be considered if filed within 10 days of formal notification of initial adverse agency action.

The fact that the telegram was brief and advised ENSEC that an explanation would follow does not affect the aforementioned time requirement with regard to when the 10 days began to run. 52 Comp. Gen. 20 (1972). The protest filed with our Office on February 24, 1978, was filed more than 10 working days after the initial adverse agency action, the opening of bids without correction of any of the alleged deficiencies, and it is, consequently, not for consideration.

Milton J. Aronson
for Paul G. Dembling
General Counsel